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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Sections 3(n)
and 332 of the Communications Act

Regulatory Treatment of Mobile
Services

GEN Docket No. 93-252

To: The Commission

REPLY COMMENTS OF ARCH COMMUNICATIONS GROUP

Arch Communications Group ("Arch") hereby submits its reply to the various comments submitted in the captioned proceeding in response to the Notice of Proposed Rulemaking (the "Notice") ^{1/}. In reply, the following is respectfully shown:

I. Background

1. Arch provides common carrier paging, private carrier paging ("PCP"), common carrier mobile and Specialized Mobile Radio ("SMR") services to the public, and focused its initial comments in this proceeding on the regulatory

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classifications of these services and narrowband PCS.^{2/} A number of other parties with principal businesses similar to those of Arch also commented in the proceeding.^{3/} In addition, relevant comments were made by others, including mobile industry associations^{4/}, public service commissions^{5/}, Regional Bell Operating Companies^{6/} equipment manufacturers^{7/} and proponents of PCS^{8/}.

2. Not surprisingly, this diverse group of commenters expresses a variety of views. There is, however, substantial agreement on some of the core issues respecting the proper

^{2/} See Comments of Arch Communications Group, Inc. filed November 8, 1993 (the "Arch Comments").

^{3/} See, e.g., Comments of Advanced Mobilecomm Technologies, Inc. ("Advanced"); AllCity Paging ("AllCity"); Cellpage, Inc., Network USA et. al ("Cellpage"); CenCall Communications Corporation ("CenCall"); Mobile Telecommunication Technology Corp. ("MTel"); Pactel Paging ("PacTel"); PageMart, Inc.; and Paging Network, Inc. ("PageNet").

^{4/} See, e.g., Comments of American Mobile Telecommunications Association ("AMTA"); Cellular Telecommunications Industry Association ("CTIA"); Industrial Telecommunications Association ("ITA"); National Association of Business and Education Radio ("NABER"); Rural Cellular Association ("RCA") and Telocator.

^{5/} See, e.g., Comments of California Public Utilities Commission ("CPUC"); District of Columbia Public Service Commission ("DCPSC"); and the New York State Department of Public Service.

^{6/} All seven of the RBOCs filed comments directly, and/or through their operating mobile subsidiaries.

^{7/} See, e.g., Comments of E. F. Johnson Company; Metricom, Inc.; Motorola; and Rockwell International.

^{8/} See, e.g., Comments of Cox Enterprises and Time Warner Telecommunications.

regulatory treatment to be accorded the services of principal interest to Arch.

II. Commercial Mobile Services Should be Broadly Defined

3. The Arch Comments concluded that "commercial mobile service" should be broadly defined and, as a result, many existing mobile services will fit the definition.^{9/} A cross-section of commenters agree.^{10/} For example, Bell Atlantic, NABER, US West and CTIA, all conclude that an expansive definition should be adopted that will encompass most mobile services including SMR, PCP, RCC, PCS and cellular services.^{11/} The reasoning generally is that the objective of fostering

^{9/} Of the existing private services, all PCP and SMR services would be deemed commercial. On the common carrier side, existing traditional mobile telephone, cellular telephone and radio paging services all would be included as commercial mobile services. Generally, PCS services will be considered commercial. In addition, the general and commercial air-ground services provided under Part 22 of the rules, the mobile satellite service regulated under Part 25, and the commercial mobile marine and aviation services provided under Parts 80 and 87, would qualify.

^{10/} Those who disagree generally provide a limited range of services and appear to be seeking to narrow the definition in order to garner for themselves the reduced regulation that would derive from being classified as private. See, e.g., Comments of Geotek, pp 3, 5-6 (SMR operator seeking to expand definition of private services); Comments of North Pittsburgh Telephone Company, pp. 1-2 (IMTS operator arguing that IMTS service should be deemed private); Comments of Pagemart, pp. 8-10 (paging carrier argues that paging services are private).

^{11/} Bell Atlantic Comments, pp. 14-17; BellSouth Comments, pp 14-20; U. S. West Comments, p.2; NABER Comments, pp. 13-17.

regulatory parity will only be achieved if similar services are classified and regulated in similar fashion.

4. Several commenters independently support the underlying premises that led Arch to classify many services as commercial. There is general agreement that the Commission should consider the service as a whole when seeking to assess whether it is offered for profit^{12/} and not only whether the interconnected portion of the call is sold for a profit. Notably, the DC Public Service Commission (the "DC PSC") and the New York State Department of Public Utilities (the "NY DPU") -- both of which have substantial regulatory experience -- urge the Commission to avoid classifications that are susceptible to manipulation through creative accounting techniques.^{13/}

5. Commenters also support Arch's claim that whether a service is "effectively available to a substantial portion of the public" should not be based upon temporal self-imposed marketing limitations.^{14/} For example, Southwestern Bell

^{12/} See Comments of CTIA, pp. 7-8; DC Public Service Commission, pp. 4; GTE Service Corporation, p. 5; McCaw, P. 15-16; NYNEX Corporation, pp 4-6; Pacific Bell, pp. 3-4.

^{13/} Comments of DC PSC, p.4; NY DPU , p. 4.

^{14/} A few commenters advocate an exemption from the commercial definition of services that are targeted to a very narrow class of users. See, e.g., Comments of Geotek, p. 3; E.F. Johnson, p. 7; Reed Smith, p. 2-4; Roamer One, p. 9. However, these commenters fail to articulate a workable manner for the Commission to distinguish between commercial and non-commercial services once it moves down this slippery slope. For example, Roamer One argues that "nominal eligibility restrictions" would not exempt a service, while "narrowly targeted eligibility restrictions" would create an
(continued...)

concludes that the service to the public test should be assessed independent of eligibility restrictions, the actual number of customers or the geographic area of the service.^{15/} The NY DPU properly notes that allowing carriers to avoid regulation by tailoring services to narrow users groups would create incentives to restrict the availability of services, which would not serve the public interest.^{16/}

6. Notwithstanding some comments to the contrary, Arch continues to believe that capacity should not be a factor in defining whether a service is commercial.^{17/} Continuing advances in the state of the radio art will put constant pressure on any definition that is based upon a presumption of capacity limitations.

^{14/} (...continued)
exemption. Arch has difficulty understanding the difference.

^{15/} Comments of Southwestern Bell, pp. 9-11; accord U. S West, p. 18.

^{16/} Comments of the New York DPU, p. 7.

^{17/} Some commenters suggested that systems that do not employ frequency reuse are not available to a substantial segment of the public. See, e. g. Comments of DC PSC, p. 6; E. F. Johnson, p. 7; North Pittsburgh Telephone Company, pp 1-2. Arch disagrees. For example, a single paging channel can serve 100,00 subscribers without frequency reuse technologies being utilized.

III. Paging Services are Interconnected

7. The overwhelming consensus of knowledgeable paging industry professionals is that common carrier and private carrier paging services are interconnected, even if they utilize store and forward technology.^{18/} Others, like Arch, are concerned that definitions based upon a particular technology or system configuration will not last, and could defeat the objective of Congress to subject like services to similar regulatory treatment.^{19/}

8. In contrast, PageMart contends that a real time interconnection to the PSTN should exist in order for a system to be deemed interconnected. Thus, it argues, paging systems using store and forward technology are not interconnected.^{20/} This position is curious to Arch in light of PageMart's strenuous argument elsewhere in its comments that it is "critical" for all paging companies to be granted interconnection rights equal to those currently enjoyed by common carrier paging companies. Arch believes that a service such as paging to which interconnection is a lifeblood should be classified as an interconnected service under the rules.

^{18/} See, e.g., Comments of Bell Atlantic, pp. 8-10; MTEL, pp. 6-7; NABER, pp. 8-10; NY DPU, pp. 5-6; Southwestern Bell, pp. 6-9; Sprint, pp. 5-6; USTA, pp. 4-5.

^{19/} NYNEX Comments, pp. 8, 11-13.

^{20/} Comments of PageMart, p. 5; see also Rockwell, p. 3; Ram Mobile Data, pp. 3-5.

**IV. Commercial Mobile Service Providers
Should Not Be Subject to Equal Access
or Be Forced to Interconnect with Others**

9. The Arch Comments pointed out that most if not all of the commercial mobile services will not be bottleneck services. Consequently, Arch indicated that it would be neither necessary nor appropriate to subject all commercial service providers to equal access obligations, or to require that they terminate traffic of other commercial service providers over their facilities.^{21/} A wealth of other commenters agree with Arch on this important point.^{22/}

10. As is correctly noted by GTE Service, equal access and other mandated interconnection requirements would be very burdensome on carriers because of the many diverse system designs and technologies that constitute commercial mobile service. And, as is noted by Liberty Cellular and Pacific Telecom Cellular, in most cases commercial mobile service customers will have access to the interexchange carrier of their choice through 1-800 access codes whether or not the commercial mobile system is configured to provide direct equal access.^{23/}

^{21/} Arch Comments, note 20.

^{22/} See, e.g., Comments of AllCity Paging, pp. 2-3; CTIA Comments, pp. 40-42; Century Cellunet, p. 7; Illinois Valley Cellular RSA, pp. 2-3; Pioneer Telephone, pp. 1-3; PN Cellular, pp. 4-6; Southwestern bell, pp. 29-31; and Telocator, pp. 24-25.

^{23/} Liberty Cellular, pp. 4-6; Pacific Telecom, pp. 3-4.

11. Those who would mandate that commercial mobile service providers provide access to their systems for other carriers appear to be pursuing narrow agendas that are unrelated to a broad variety of highly competitive mobile services.^{24/} Particularly in the case of paging services and narrowband PCS services, the number of competitors is sufficiently large to assure that no carrier's system will become an essential bottleneck facility.^{25/}

V. Minimum Regulation of Mobile Services is Appropriate.

12. Given the diversity of comments and commenters in this proceeding, the Commission must be struck by the virtual unanimity of opinion that commercial mobile services should be subject to a minimum of Title II regulation and that the

^{24/} For example, the California PUC seeks to impose equal access obligations on all PCS operators because they will compete with LECs, without distinguishing wideband from narrowband PCS. CA PUC Comments, p. 11. The National Cellular Resellers Association seeks to impose interconnection obligations on all commercial mobile service providers due to its alleged problems with securing access to cellular facilities, but fails to distinguish the competitive aspects of the cellular business from other mobile business such as paging.

^{25/} Arch is particularly concerned that forced interconnection could enable a carrier to "cherry pick" geographic areas and then expand service into less populous regions by forcing its way onto the system of a competitor who has built a larger regional system.

Commission should remove regulatory burdens to the maximum extent permitted by the recent legislation.^{26/}

13. The rationale advanced most often for reduced regulation is that mobile services are highly competitive, and will become even more so as new PCS providers enter the market.^{27/} In addition, the removal of artificial distinctions between service categories in the course of defining commercial mobile service will further augment competition. In view of governmental budget constraints, it makes perfect sense for the Commission to eliminate unnecessary common carriers regulations.

VI. Conclusion

13. The foregoing premises having been duly considered, Arch respectfully requests that the Commission take actions in this proceeding consistent with Arch's earlier filed comments and this reply.

Respectfully Submitted

Arch Communications Group

^{26/} See, e.g., Comments of BellSouth at pp. 26-31, GTE at pp. 14-19, McCaw at pp. 4-5, Motorola at pp. 17-19, MTel at pp. 13, 15-18, NABER at pp. 14-16, Nextel at pp. 20-22, NYNEX at pp. 18-22, PageNet at pp. 14-24, PacTel Paging at pp. 11-12, RochesterTel at pp. 6-9, Utilities Telecommunications Council at p. 18, USTA at pp. 10-11.

^{27/} See. e. g., Comments of Rig Telephone, Inc. p. 3; CTIA, pp. 25-35; Century, pp. 5-6; and Cox, pp. 7-8;

CERTIFICATE OF SERVICE

I, Tana Christine Maples, hereby certify that I have this 23rd day of November, 1993, caused copies of the foregoing Reply Comments of Arch Communications Group to be delivered by hand, courier charges prepaid, to the following:

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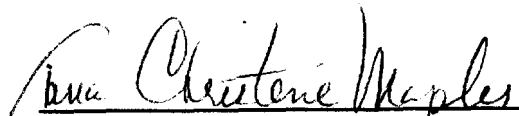
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